In the High Court of Judicature at Madras

Dated:01.03.2007

Coram

The Honourable Mr.Justice A.C.ARUMUGAPERUMAL ADITYAN

Second Appeal No.680 OF 1997

1. S.Rajendran
2. S.Santhi
3. S.Sundarambal
4. Vasantha
5. V.Saraswathi
6. K.Thavamani ..Appellants

v

1. Boojambikai
2. S.Ananthamurugan
3. S.Chandrasekaran
4. Kasthoori
5. A.Anjali Devi
6. Chithra ..Respondents

This second appeal is filed against the judgment and decree dated 31.3.1997 made in A.S.No.12 of 1997 on the file of the Court of Additional District Judge, Nagapattinam confirming the decree and Judgment in O.S.No.301 of 1993 dated 23.4.1996 on the file of the Court of District Munsif, Nagapattinam.

For Appellants : Mr.R.Kannan

For Respondents : Mr. Srinath Sridevan

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JUDGMENT

This appeal has been preferred against the Judgment and decree in A.S.No.12 of 1997 on the file of the Court of Additional District Judge, Nagapattinam. The defendants, who have lost their defence before the Courts below, are the appellants herein.

2. The suit is for declaration of title and for recovery of possession in respect of 39 cents in R.S.No.109/C-17, Nagapattinam Taluk.

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3. The averments in the plaint for the purpose of deciding this appeal sans irrelevant particulars are as follows:

The plaint schedule property is 39 cents of punja land in R.S.No.109/C-17 in Keevalur Village. The suit property originally belonged to Rethinathachi, the mother-in-law of the first plaintiff and grand mother of the plaintiffs 2 to 6, under the sale deed dated 16.6.1954. From the date of the said sale deed , Rethinathachi was in possession and enjoyment of the suit property. She had also mortgaged the same to one Aravindha Ammal on 18.1.1959 and subsequently, discharged the said mortgage. Rethinathachi had two sons viz., D.Subramania Pillai and D.Shanumughasundaram Pillai. Subramania Pillai looked after his mother and maintained her. The younger son Shanumughasundaram also attended to her needs. Rethinathachi, out of her love and affection in favour Shanumughasundaram Pillai executed a registered settlement deed dated 22.4.1964. The said settlement was accepted by Shanmughasundaram Pillai and he was in possession of the plaint schedule property. At the time of execution of the above said settlement deed ,Rethinathachi had handed over the original sale deed dated 16.6.1954 under which she had purchased the suit property and also she had handed over the earlier mortgage deed dated 18.1.1959 to Shanmughasundaram Pillai. From the date of settlement deed, Shanmughasundaram Pillai was in possession and enjoyment of the suit property in his own right. There are 14 yielding coconut trees in the suit property.

3a)After the settlement deed, Shanmughasundaram Pillai has also planted some more coconut saplings. Shanmughasundaram Pillai was working as a police constable in the Police Department. He has to stay at Madras since he was working in the CID Branch at Madras. Hence, the first defendant was granted licence to enjoy the usufructs from the coconut trees in the year 1966. The first defendant also executed a Kuthagai receipts on 12.3.1966 in favour of Shanmughasundaram Pillai agreeing to pay Rs.25/- per year for 14 coconut trees or to deliver 200 coconuts in four instalments. ie., 50 coconut once in three months. In pursuance of the licence granted to the first defendant, he was in possession of the coconut trees and was giving the lease amount of Rs.25/- or delivering the coconut as agreed. He has also written a letter dated 30.12.1970 to Shanmughasundaram Pillai in which he agreed to deliver the coconuts only in the capacity of the licensee, the first defendant was in possession of the coconut trees in the suit properties. Shanmughasundaram Pillai died prematurely in October 1971. Even thereafter, the first defendant was continued to be in possession of the coconut trees as a licensee.

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3b) On the death of Shanmughasundaram Pillai, the plaintiffs who are the wife and children of Shanmughasundaram Pillai became entitled to the suit property as the legal heirs of Shanmughasundaram Pillai. The plaintiffs are in possession and enjoyment of the suit property and the first defendant as usual was delivering the coconuts from the suit property. But the first defenant has stopped delivering of the coconuts for the past three months. He has also cut and removed all the coconut trees unauthorisedly and also cut and carried away the valuable standing trees like Poovarasu, Bamboo and Acacia worth about Rs.5,000/- and the first defenant attempted to convert the suit property as a building site. The plaintiffs had issued a suit notice on 2.10.1993 terminating the licence and directing the first defendant to deliver the possession of the suit property. The first defendant has sent a reply dated 11.10.1993 stating that he is in possession of the suit property for more than the statutory period and that patta has been granted in favour of the third defendant, recognising his possession over the suit property. Hence the suit.

4. The defenants have filed a joint written statement contending as follows:
The first defendant is not a necessary party to the suit. He is in no way connected with the plaint schedule property. The relationship of the parties is admitted. The alleged settlement deed in favour of the Shanmughasundaram Pillai was subsequently cancelled by the settler Rethinathachi on 3.5.1972 . Shanmughasundaram Pillai died on 21.9.1971. After his death, the settlement deed dated 22.4.1964 was cancelled. The settlement deed dated 22.4.1964 is not a genuine document. On 5.5.1972, Rethinathachi had executed another settlement deed in favour of defendants 2 and 3. The said settlement deed was also registered on 8.5.1972.

4a) The suit property has been scheduled as Item No.1 to the settlement deed dated 5.5.1972. Rethinathachi also died on 9.11.1978. The first defendant has performed obsequies for the late Rethinathachi. The patta for the suit survey number property stands in the name of defendants 2 and 3. The defendants 2 and 3 are paying the land tax for the suit property. When the defendants 2 and 3 began to construct their house in the suit property, the plaintiffs began to obstruct the same. The averment in the plaint that even on the date of registration of the settlement deed on 16.6.1954, the earlier mortgage deed as well as predecessors-in-title were handed over to Shanmughasundaram Pillai was not true. Shanmughasundaram Pillai had committed theft of both documents, taking advantage of the fact that he was working in the police Department. Shanmughasundaram Pillai never planted any coconut saplings in the suit property. The first defendant has not executed

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any lease deed in respect of the usufructs of the coconut trees standing in the suit property.

4b) Only for the purpose of the suit, the plaintiffs have averred that even after 1971 , the first defendant was enjoying the usufructs of the coconut trees in the capacity of a licensee. The first defendant has not cut or removed any tree in the suit property. For the suit notice, the first defendant has given a proper notice dated 11.10.1993. The plaintiffs have no cause of action. Hence the suit is liable to be dismissed.

5. On the above pleadings, the learned trial Judge has framed five issues for trial. On the side of the plaintiffs, the first plaintiff has examined herself as P.W.1 besides P.W.2 and P.W.3 were examined and Exs A1 to A8 were marked. On the side of the defendants, the second defendant has examined himself as D.W.1 and exhibited Exs B1 to B12. A Commissioner was appointed in this case and his report is Ex C1 and his plan is Ex C2.

6. After meticulously scanning the evidence both oral and documentary let in before the trial Court, the learned trial Judge has come to a conclusion that the plaintiffs are entitled to the relief asked for in the plaint and consequently, decreed the suit with costs as prayed for, giving two months time to the defendants to vacate and hand over the possesssion of the suit property and the question of mesne profits was relegated in a separate proceedings under Order 20 Rule 12 CPC, besides granting a decree for Rs.2575/- being the arrears of past lease amount. Aggrieved by the Judgement of the learned trial Judge, the defendants have preferred an appeal in A.S.No.12 of 1997 before the Additional District Judge, Nagapattinam. The learned first appellate Judge, after giving due deliberation for the submissions made by the learned counsel on both sides and after going through the evidence both oral and documentary let in before the trial Court has concurred with the findings of the learned trial Judge thereby dismissing the appeal confirming the decree and Judgment of the learned trial Judge which necessitated the defendants to prefer this second appeal.

7. The substantial questions of law involved in this appeal are

> " 1. When the findings of the Courts below that the settlement deed Ex A2 executed by Rethinathachi is void document for the reasons stated by the settlor herself in the cancellation deed Ex B4 dated 3.5.1972 even though there is no reservation of power of revocation in the settement deed Ex A2 is correct?

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2. Whether the findings of the Courts below that the settlement deed Ex A2 was given effect to by the settler as per the recitals found in Ex A2 eventhough there is no evidence for taking possession of the suit property when admittedly the settlee was away from the place of residence of the settlor are correct?

8. Heard Mr.R.Kannan, learned counsel appearing for the appellants and Mr.Srinath Sridevan, learned counsel appearing for the respondents and considered their respective submissions.

9.The Points:

The combat is between the wife and children of one brother with other brother and his sons. Admittedly, the plaint schedule survey Number property measuring 39 cents belongs to Rethinathachi,the mother of the first defendant and the deceased husband of the first plaintiff. Admittedly Rethinathachi had two sons viz., Subramania Pillai and Shanmughasundaram Pillai. The first plaintiff is the wife of the deceased Shanmughasundaram Pillai. The plaintiffs claim right and title over the plaint schedule property under Ex A2 registered settlement deed said to have been executed by Rethinathachi on 18.1.1959. It is the case of the plaintififs that even on the date of execution of the registered settlement deed dated 18.1.1959 under Ex A2, the parent document Ex A1 under which Rethinathachi had purchased the suit property on 16.6.1964 was also delivered. To show that after the purchase of the plaint schedule property under Ex A1, Rethinathachi was in possession and enjoyment of the property. Ex A3 mortgage deed dated 18.1.1959 was also produced. An earlier mortgage under Ex A3 dated 18.1.1959 by Rethinathachi was also redeemed as seen from the endorsement on the back of the said document. Both Exs A1 as well as Ex A3 document were produced only by the plaintiffs. According to the plaintiffs, since Shanmughasundaram Pillai , the settlee under Ex A2 was a police constable working in CID Branch at Madras, even during the life time of Shanmughasundaram Pillai, the suit property was leased out to his own brother Subramania Pillai who is the first defendant herein under Ex A6. Ex A6 is for lease of usufructs of 14 coconut trees standing in the suit survey number property.

9a) The learned counsel appearing for the appellants would contend that in Ex A6, there is no survey number mentioned and hence the learned counsel for the appellants would contend that on the basis of Ex A6 lease for usufructs, the plaintififs cannot claim that they are in possession and enjoyment of the suit property, after the date of execution of Ex A2. The learned counsel appearing for the appellants would contend that in lieu of Ex A2 settlement deed, there was no posssession conveyed under the same and that Rethinathachi herself was in possession and enjoyment of

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the suit property and later she executed Ex B2 settlement deed in favour of the defendants 2 and 3, who are the sons of the first defendant. Ex B2 is dated 5.5.1972. Ex B2 has been executed after a lapse of 13 years from the date of execution of Ex A2 settlement deed. It is pertinent to note that Ex B2 settlement deed has been executed after the death of Shanmughasundaram Pillai, the settlee under Ex A2. It has been recited in Ex B2 that Rethinathachi had executed a cancellation deed dated 3.5.1972 in order to cancel Ex A2 settlement deed. Ex B4 is dated 3.5.1972 executed to cancel Ex A2 settlement deed. Even in Ex B4, it has been stated that Shanmughasundaram Pillai died on 21.9.1971. Rethinathachi is also now no more.

9b) D.W.1 admits that Rethinathachi also died in the year 1978. So the important point is whether the plaintiffs are entitled to declaration in respect of the suit propeprty under Ex A2 or the defendants have derived title under EX B2 settlement deed.

9c) Under Sections 122,123 and 126 of the Transfer of Property Act 1882 deal with "Gift". Under Section 122 of the Transfer of Property Act, "Gift" is the transfer of certain existing movable or immovable property made voluntarily and without consideration by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee. So for a valid gift, there must be acceptance . To prove acceptance by the donee, the plaintiffs have produced Exs A1 and A3 documents. Ex A1 is the sale deed in favour of Rethinathachi, the settlee under Ex A2 and Ex A3 is the mortgage deed executed and later discharged by Rethinathachi in respect of the suit property. There is no reservation for cancellation is provided under Ex A2 settlement deed by the settlor. EX B4 cancellation of EX A2 settlement deed has been executed by Rethinathachi after the death of her son viz., Shanmughasundaram Pillai.

9d) Section 126 of the Transfer of Property Act deals with when a gift can be suspended or revoked. As per Section 126 of the Transfer of Property Act, the donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be. A gift may also be revoked in any of the cases(save want or failure of consideration) in which, if it were a contract, it might be rescinded.. Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice. So, from the above provision of law,the revocation of Ex A2 settlement deed under Ex B4 is void. So under Ex B2 settlement deed, defendants 2 and 3 cannot claim any right in respect of the suit property as rightly held by the Courts below.

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10. Yet another point both the Courts below have failed to note is that the first defendant, who is the father of the defendants 2 and 3 has also signed as an identifying witnesses in Ex A2 registered settlement deed in favour of his brother Shanmughasundaram Pillai. So the defence put forward by the defendants that Rethinathachi was deceived by saying that only a Will has been registered under Ex A2 cannot stand scrutiny even for a moment.

11. The learned counsel for the appellants would contend that to show the possession, the plaintiffs have relied on Ex A6 alone but there is no survey number mentioned in Ex A6 and hence the learned counsel for the appellants would contend that Ex A6 does not relate to the plaint schedule property. Ex A6 is an agreement for lease of usufructs in respect of 14 coconut trees. The first defendant has executed the same in favour of his brother Shanmughasundaram while he was alive on 12.3.1966 . To show that the coconut trees mentioned under Ex A6 are not the suit survey number property and they are in some other survey number property, the defendants have not filed any documents. On the other hand, D.W.1 Rajendran would admit in the cross examination itself that there are coconut trees in the suit survey number property but he would claim that those coconut trees were planted by him. Even in Ex A2 settlement deed, while referring to the schedule of property, it has been mentioned that there are trees in the suit survey number property. Even two years from the execution of Ex A2, Ex A6 has been executed by the first defendant. So the allegation of the second defendant as D.W.1 that five coconut trees were planted by him cannot be true because it is seen from Ex A6 itself that all the 14 coconut trees are well grown yielding trees and only in respect of usufructs of 14 coconut trees, the said agreement was entered into between the first defendant and his brother Shanmughasundaram. Till the death of her son, Shanmughasundaram, the settlee under Ex A2, the settlor had not taken any steps to cancel or revoke Ex A2 settlement deed. Under such circumstances, I do not find any reason to interfere with the well considered judgment of the learned first appellate Court in A.S.No.12of 1997 on the file of the Court of Additional District Judge,Nagapattinam . Points are answered accordingly.

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12. In fine, the appeal is dismisised confirming the decree and judgment in A.S.No.12 of 1997 on the file of the Court of Additional District Judge-cum-Chief Judicial Magistrate, Nagapattinam, with costs through out.

sg

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Additional District Judge, Nagapattinam

2. The District Munsif, Nagapattinam

3. The Section Officer,
VR Section, High Court,
Madras.

+ 1 cc to Mr. Srinath Sridevan, Advocate, SR No.12770

+ 1 cc to Mr. R. Kannan, Advocate, SR No.12665

TEJ(CO)
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